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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

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File: WAC 02 024 51425 Office: California Service Center Date: FEB [illegible] 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Stevens

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The petitioner seeks employment as an "optical storage/encryption scientist." Counsel states that the petitioner, an Iraqi native and now a citizen of Sweden, "is one of the very top encryption scientists in the country of Sweden and in the important region of Scandinavia." The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify

as an alien of extraordinary ability. The petitioner has submitted evidence which, counsel claims, meets the following criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

A partially translated newspaper article in the record indicates that the petitioner won 7th Prize in the National Scientific Book Authoring Contest held in Iraq in 1986. The initial submission included no other information about this contest to establish its importance or to show that 7th prize is generally considered to be significant.

Because the record contained minimal documentation of this award (and nothing at all from the actual awarding entity), the director instructed the petitioner to "[s]ubmit evidence to establish the origination, purpose, significance and scope" of the award. In response, the petitioner offers a statement from counsel describing the award and the circumstances under which the petitioner was selected as a winner. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). If actual evidence about the prize is not available, then counsel had no reliable independent means to learn about this award. Information provided to counsel by the petitioner amounts to a claim rather than evidence to support that claim.

Counsel states that, because the petitioner has defected from Iraq, he does not have access to Iraqi records in order to obtain further documentation about the award. Counsel asserts that the director's request "is devised in such a way as to effectively penalize" the petitioner because the director "must have known that the satisfaction of his request by a Kurdish defector was an impossibility." The Iraqi government's at times lethal abuse of Iraqi Kurds is well documented, as is the United States Government's current stance regarding the government of Iraq. Nevertheless, the pertinent statute and regulations state, clearly and unambiguously, that the burden of proof is on the petitioner. There is no provision for this burden to be excused or reduced based on the reasons that the petitioner offers for the absence of such evidence. The statute calls for "extensive documentation," a burden that is not met by a single partially translated newspaper article. The director's position that the burden of proof applies equally to all aliens does not represent a bias against Kurds, Iraqis, or defectors in general, nor does it demonstrate that "defectors from Iraq, and especially Kurds, are not particularly welcome in the United States." The director's impartial refusal to offer especially lenient evidentiary standards to Kurds does not constitute hostility or bias. Furthermore, the petitioner's initial submission did not stress that the petitioner was a "defector" who would be unable to obtain further evidence. Counsel's suggestion that the director's request was a deliberate attempt to sabotage the petition, out of antipathy toward Kurdish defectors, is entirely without merit or basis in fact and scarcely merits further comment.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

Counsel asserts that the petitioner satisfies this criterion through his membership in the Institute of Electrical and Electronics Engineers ("IEEE"), the Association for Computing Machinery ("ACM"), the American Association for the Advancement of Science ("AAAS"), the Optical Society of America ("OSA"), SPIE (the International Society for Optical Engineering), the European Optical Society ("EOS"), the Institute of Mathematics and its Applications ("IMA"), and the Royal Statistical Society ("RSS"). The petitioner's initial submission included evidence of his membership in these associations, but nothing to show that these associations require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. Accordingly, the director requested evidence of the associations' membership requirements.

In response, counsel charges that the director has made the "odious allegation" that "these well-known organizations . . . are merely imaginary and fraudulent constructs of the petitioner." The director made no such allegation; the director's use of the phrase "alleged membership" refers to what the director considered the petitioner's insufficient proof of membership, rather than the claim that the associations have no members. Otherwise, the director would have referred to "alleged associations."

The petitioner's response also included documentation from the official web sites of the various associations. According to IEEE materials, "IEEE membership is open to professionals and students with varying levels of academic accomplishment and work experience." The materials distinguish between three grades of membership: member, senior member and fellow, and state "Member and Senior Member grades recognize those who have achieved professional proficiency as demonstrated by degrees received and/or work experience. IEEE Fellow grade is reserved for those members with unusual distinction in the profession and is conferred only by invitation of the Board of Directors." The petitioner is a member, not a senior member or fellow. Only the grade of fellow requires "unusual distinction in the field." Academic degrees and work experience are not outstanding achievements. The IEEE materials in the record also indicate that the association has "more than 377,000 members." This very large membership size demonstrates that the IEEE does not restrict its membership to the elite of the field.

Materials from the ACM web site (www.acm.org) do not discuss membership requirements, but indicate that the association has between 75,000 and 80,000 members. Again, the large membership size does not suggest restrictive membership criteria.[1] Similarly, OSA documentation claims 14,000 members but does not refer to membership requirements.[2]

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[1] A visit to www.acm.org reveals that prospective members "must satisfy one of the qualifications below:

1. Bachelor's Degree (in any subject area); or
2. Equivalent level of Education; or
3. Two years full-time employment in the IT field."

None of the above constitutes outstanding achievements.

[2] OSA's web site, www.osa.org, indicates that regular member status is available to "[s]cientist[s], engineers, technicians and individuals currently working or interested in optics or related field." A higher grade of membership, "fellow," is available to "[a] Regular member who has served with distinction in the advancement of optics and who has been nominated by a pre-existing Fellow Member." There is no evidence that the petitioner is a fellow member of OSA.

Regarding the petitioner's membership in RSS, counsel states that the association "is one of the premier statistical societies in the world." RSS documents from www.rss.org.uk submitted by the petitioner offer no indication of membership requirements, even though a page submitted by the petitioner clearly shows a link to a page marked "membership."[3]

Nothing on EOS' web site details that association's membership requirements. The burden of proof is on the petitioner to establish those requirements. Counsel's only comment regarding this membership is that EOS "is the foremost organization in Europe devoted to the advancement of science in optics and related fields." The reputation of EOS is not in question; as the RSS' material, discussed above, shows, an association's reputation does not establish or imply that its membership standards meet the regulatory requirements.

AAAS materials describe the association as "the world's largest general scientific society," with 134,000 members. The materials also specify that membership is "[o]pen to all." Counsel, in the accompanying letter, acknowledges this open membership, but offers no explanation as to why the petitioner had previously claimed (through counsel) that this membership constitutes membership in an association requiring outstanding achievements of its members.

SPIE's web site states "[t]o qualify for membership, a person or company should be engaged in research, development, manufacture, management, or sale of optics, photonics, or optoelectronics technology, or of products and systems incorporating such technology." This description seems to fit virtually everyone employed in the field of optics. It is not an outstanding achievement simply to work in the optics industry.

Finally, the petitioner submits materials from IMA's web site, www.ima.org.uk. The materials submitted discuss the association's organizational structure but do not address membership requirements (despite, again, a clearly marked "membership" link in the margin).[4]

As shown above, the petitioner has not shown that any of the above associations requires outstanding achievements of their members. Some of them very clearly do not require outstanding achievements, despite counsel's earlier claims to the contrary. While some of the associations have special member grades for individuals of distinction, the petitioner has not shown that he holds these elite member grades.

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[3] The "membership" page in question, when accessed, discusses various membership grades and states "Fellowship is open to all who have an interest in statistics: formal qualifications are not needed." The petitioner is a fellow of RSS.

[4] The petitioner is a graduate member of IMA. The membership materials at www.ima.org.uk indicates graduate members "hold an honours degree in mathematics or have obtained an honours degree in a related subject and are participating in training or work experience in which mathematical knowledge of a similar level is attained." The materials make it clear that graduate membership is considered a grade "leading to Chartered Mathematician Status," which in turn applies to "professionally qualified mathematicians entitled to use the designation Chartered Mathematician." Thus, the petitioner's membership status demonstrates that IMA did not consider the petitioner to be "professionally qualified," but rather that he was "participating in training."

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner submits three articles in an effort to satisfy this criterion. Two of the articles appeared in the Arabic-language newspaper *Al-Thawra* in the 1970s. The third, from the Swedish publication *Datateknik*, appeared in 1995. The petitioner initially submitted no information to establish that these publications represent major media, and the record lacks the required translations. The petitioner has submitted only summary translations, so that the Service cannot determine to what extent the articles are about the petitioner.

In response to the director's request for further evidence, counsel asserts "Al-Thawra ('The Revolution') was the principal upscale Arabic language newspaper published in Iraq on the dates of these articles. Within Iraq, it is the intellectual and social equivalent of Pravda in Russia or the New York Times in the United States." Counsel cites authoritative sources indicating that *Al-Thawra* is an official publication of Iraq's ruling Ba'ath party and that the U.S. Department of State has referred to the publication as "the regime's mouthpiece." This information establishes that *Al-Thawra* qualifies as major media.

The evidence, however, must still be considered in context and it its totality. The record still lacks complete translations, making it impossible to determine whether the petitioner was the main subject of either article. The length of the articles is not evident from the copies submitted, and therefore the sufficiency of the two-sentence summary translations cannot be ascertained. Furthermore, counsel has stated that the petitioner's area of extraordinary ability is as an "optical storage/encryption scientist." The petitioner has not shown that either of the *Al-Thawra* articles pertains to optical storage or encryption. This point is not a trivial one, because the news coverage must, by regulation, relate to the alien's work in the field for which classification is sought.

Counsel asserts that the third publication, *Datateknik*, is "one of the principal publications in the field in Scandinavia," but offers no corroboration of this claim. Counsel's previous representation of, for instance, IEEE membership as requiring outstanding achievement, when in fact it plainly does not, undermines counsel's reliability as a primary source of information even if it were permissible for counsel to make unsupported claims of this kind. Counsel does not explain how the apparent 18-year gap in news coverage from 1977 to 1995 is consistent with sustained acclaim.

The *Datateknik* article is the only article in the record that discusses the petitioner's work in optical storage, specifically the standards used in compact disc ("CD") encoding. Counsel asserts that, according to the article, the petitioner "discovered that there are missing parts and calculation errors in the standards" developed by Sony and Phillips when creating the CD in 1973. According to counsel, the petitioner "found all the missing and left-out parts in the standards and developed a software encoding/decoding algorithm for CDs. These discoveries by the self-petitioner had worldwide consequences for the CD related industries, leading to the

revision of the standards and the publishing of the 2nd edition of the ISO/10149 on July 17, 1995."

Counsel states "CDs are the things you play music and videos on today," implying that the ISO 10149 standards apply to all CDs. The petitioner submits a copy of the cover page for those standards. The full title of the standards in question is "ISO/IEC 10149:1995, Information technology - Data interchange on read-only 120 mm optical data disks (CD-ROM)." Audio CDs and video DVDs are governed by other standards, not by ISO/IEC 10149; that standard applies only to CD-ROMs used to store computer data.

The nine-sentence summary translation of the article identifies the petitioner by name three times, mentioning no other names. The original Swedish-language article, a full page long, contains several mentions of the petitioner's names but even more frequently shows the name of Lennart Olsson. The article includes photographs of both individuals, but the photograph of Mr. Olsson is more than twice as large as the photograph of the petitioner. This evidence is consistent with the conclusion that Lennart Olsson is the primary subject of the article, with the petitioner a secondary subject at best.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The petitioner submits copies of three master's theses prepared by students at Lund University while the petitioner was an assistant professor there. Nothing in the record shows that the petitioner "judged" the theses. The author of one thesis thanked the petitioner for providing "new information and material"; another student stated that the petitioner "explained the mysteries of the coding of a disc and also helped me making [sic] this report more easy to read." This second student specifically thanks another individual who "has guided me through the whole project." A third thesis offers general acknowledgments, thanking the petitioner among others, with no clear indication of the nature of the petitioner's contribution.

To assert that review of student work at one's own university is a sign of sustained acclaim is to presume that most university instructors and professors are not entrusted with the review of master's students' work in this manner.

In response to the director's request for further evidence, counsel cites the previously submitted evidence and states:

> The petitioner supervised the original graduate theses of researchers in his field. These theses constituted original research of significance in the field, without which the various degrees would not have been awarded. The petitioner was selected as someone with the high level advanced and comprehensive knowledge in the field required to direct, supervise and monitor original scientific research of significance in the field.

The record contains no support for counsel's assertions regarding the significance of the theses, or the criteria used in the purported selection of the petitioner as the "judge" of the theses. The evidence points, at best, to the petitioner's having played an advisory role, and the petitioner has not established that assisting graduate students with their master's theses in this manner is a mark of distinction and acclaim, rather than an expected and routine duty of professors who teach graduate students.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Counsel cites the petitioner's patents and patent applications, as well as product specifications and technical standards developed or revised by the petitioner. A patent establishes the originality of a contribution, but does not establish its significance in the field. A pending patent carries even less weight than an approved patent because the very originality has not yet been certified by competent authorities. The evidence submitted shows that the petitioner has been active as a researcher and innovator but the petitioner does not establish the significance of his work merely by documenting its existence.

In response to the director's request for evidence to establish the significance of the petitioner's work in relation to the work of others in the field, counsel asserts that "patented inventions are, as a matter of law . . . original contributions of significance in the field." Counsel offers quotations from an article entitled "What is Intellectual Property?" to establish that an invention "must be novel, useful, and nonobvious" to qualify for a patent, but these quotations do not demonstrate that a patent is a sign of major significance.

Counsel correctly states that "U.S. law does not require that the applicant be the single greatest inventor of all time and all places in order to fulfill this category." While this is certainly true, counsel's logic goes to the other extreme, i.e. that everyone who holds a patent fulfills the criterion. Given the sheer quantity of patents approved by the U.S. Patent Office every year (discussed in further detail below), such a standard is obviously far too loose to be of any use in distinguishing those inventors and innovators at the very top of their respective fields.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submits copies of letters indicating that publishers have accepted his books and articles for publication. Many of these materials date from the late 1980s and appear to discuss computer programming in general, with no evident emphasis on optical storage or encryption. One book, for instance, is entitled *Principles of Computer Science and Programming with BASIC Language*, with chapters such as "The principal parts of the computers," "How computers work," and "Programming in BASIC language." One of the petitioner's articles is entitled "Word Processing System: What is it? What does it do? And how do we choose it?" Other, earlier articles are geared toward the uses of data banks in the context of agriculture. The record does not establish the circulation or impact of these early writings.

The director instructed the petitioner to submit evidence of "the significance and importance of these articles." In response, counsel asserts that all of the petitioner's articles were "distributed and used by the Government of Iraq in connection with the education and training of postgraduate level scientific and research personnel in Iraq and other Arab countries." Aside from the complete lack of any documentary support for counsel's assertions in this regard, it remains that the published articles have no established bearing on the petitioner's claimed area of extraordinary ability, i.e. optical storage and encryption.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Counsel asserts that the petitioner satisfies this criterion through a presentation he made at a 1998 conference. Scientific conferences are not artistic in nature, as the regulation plainly requires. Presentations at these conferences are more akin to publication of scholarly articles, because they involve the dissemination of highly technical information to a specialized audience. The petitioner also shows that he was invited to attend two meetings of a standardization group, but the record does not indicate what material, if any, the petitioner presented at these meetings.

The burden is on the petitioner to show that his published and/or presented work has contributed to sustained national or international acclaim. The very existence of such material does not presumptively establish acclaim; rather, published articles are a means through which one may secure acclaim, depending on the quality of the material and the reaction of others in the field.

The director's request for further evidence includes the observation that "[r]esearch paper presentations are not artistic displays." In response, counsel asserts "[f]or the purposes of the Immigration and Nationality Act . . . 'artistic' is a term to be interpreted broadly." Counsel offers no case law or legislative history to support this interpretation, which fails to take into account the fact that the term "artistic displays" does not appear in the relevant section of the Act itself, but rather only in the Service's regulations. Counsel then appears to suggest that every use of DVD technology constitutes "display" of the petitioner's work because the petitioner's work is relevant to DVD technology.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

As evidence under this criterion, counsel cites a letter from Philips International B.V., acknowledging the petitioner's "contribution to the realization of" Philips' *DVD-Video Software production guide*. The petitioner has not shown that his undefined role in preparing this guide book amounts to a leading or critical role for Philips. The letter in question is three sentences long, referring to an attached free copy of the guide and instructing the petitioner "to obtain ordering details" if more copies are desired. The petitioner's name is handwritten above the salutation "Dear sir," indicating that this is a form letter sent to multiple contributors.

The petitioner also submits a photograph of ten staff members at Obducat, with the petitioner's image highlighted on the copy. Accompanying the photograph is a "Certificate of Employment,"

apparently a job reference letter, from Obducat president Lennart Olsson, verifying that the petitioner was a senior scientist at Obducat from 1996 to 1999. This material verifies the petitioner's employment at Obducat but it does not demonstrate that the petitioner played a leading or critical role for the company.

The director requested further evidence to establish the leading and/or critical nature of the petitioner's various positions and roles. In response, counsel discusses the distinguished reputations of the companies named above but offers no new evidence to establish that the petitioner's involvement with those companies amounts to a leading or critical role.

Beyond the above criteria, counsel notes that the petitioner has been accepted for inclusion in numerous biographical dictionaries, mostly published by the American Biographical Institute and the International Biographical Centre. Those two entities have also informed the petitioner of his nomination for various honors, commemorated by certificates and statues. The materials in the record suggest that the purported awardees must purchase the books, certificates, and other items. These directories and honors appear to be "vanity" items, designed to raise money for the awarding entities through sales to recipients. The petitioner has not shown that any of these honors are widely recognized outside of the entities that sell them.[5] Counsel's assertion that publications of the American Biographical Institute and the International Biographical Centre (which appears to be affiliated with the American Biographical Institute) are "universally recognized" cannot suffice in this regard.

The director denied the petition, citing numerous deficiencies in the record. On appeal, counsel asserts that the decision is "self-contradictory," and offers an example:

> [T]he decision concedes that self-petitioner holds an approved patent and that "granting a patent may constitute evidence of a self-petitioner's work," then after dismissing without consideration the self-petitioner's multiple pending patents, and refusing to consider his approved patent, denies that evidence of an approved patent is "evidence of original scientific, scholarly, artistic, or business-related contributions of major significance in the field."

The director's finding is not, as counsel contends, self-contradictory. The director stated that "the granting of a patent may constitute evidence of the originality of a self-petitioner's research work," but the regulation at 8 C.F.R. 204.5(h)(3)(v) requires that a contribution must be not only original, but also of major significance. There is no contradiction in the director's finding that a patent establishes originality, but does not establish major significance. Materials available from the US Patent and Trademark Office (http://www.uspto.gov/web/offices/ac/ido/oeip/taf/st_co_01.htm) indicate that 183,981 patents were issued in 2001 alone, reflecting an approval rate in excess of

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[5] The New Zealand Ministry of Consumer Affairs cautions that an award nomination from the American Biographical Institute "is simply a money-making guise." The Ministry notes that the nomination letters are vague and general, using such phrases as "overall accomplishments and contributions to society," and the Ministry's site asks the rhetorical question "[h]ow many Grammy award winners have to pay for their own Grammy?" (Source: www.consumer-ministry.govt.nz/columns/wa_woman_of_the_year.html)

50%. It strains credulity to claim that every one of those patents represents a contribution of major significance. The burden is on the petitioner to show that his patented inventions are more significant than most other patented inventions in his field.

Counsel states "[t]his Kafkaesque decision seems to be founded on a rejection of the Swedish citizen self-petitioner's Iraqi (Kurdish) origin and personal history rather than any lack of 'extraordinary ability' in his field." The petitioner's national origin is mentioned only once in the director's decision, as follows. When discussing the petitioner's claimed award, the director stated that counsel "asserts that the self-petitioner is a Kurd who fled Iraq in 1991 thus, indicating the inability to obtain a documentation [sic] of the award. The issue that the self-petitioner is a Kurd who fled Iraq in 1991 is irrelevant in this case." The director appears to have made this statement not to denigrate the petitioner's Kurdish background, but rather to emphasize that the petitioner bears the burden of proof and must provide evidence to support his claims. If the petitioner cannot produce such evidence, he has not satisfied the burden of proof. It is for this reason that the petitioner's Kurdish origin is, as the director stated, "irrelevant." If supporting evidence is absent from the record, the related claim is unsubstantiated, regardless of why that evidence is absent.

Considering that the director mentioned the petitioner's Kurdish heritage for the sole purpose of deeming it "irrelevant" to the outcome of the petition, counsel's allegation that the decision is "founded on" the petitioner's ethnicity is baseless and insupportable. Throughout this proceeding, counsel appears to have operated on the assumption that the director has systematically conspired to deny the petition, not because the petitioner is ineligible, but because the petitioner is an Iraqi Kurd who defected in 1991. The absence of favoritism towards Iraqi Kurds is falsely interpreted as bias against Kurds, and benign comments by the director are represented as "odious allegations." In reality, it is counsel, not the director, who has repeatedly and gratuitously emphasized the petitioner's ethnicity. For instance, in response to the director's request for additional evidence (which made absolutely no mention at all of the petitioner's ethnic or national origin), counsel stated "[i]t is truly puzzling that you found the documentation submitted to be 'deficient,' unless you are in some way punishing or penalizing [the petitioner] for defecting from his pre-1991 employer."

With regard to counsel's contention that the decision was based on the petitioner's "personal history," the petitioner must show that his "personal history" includes sustained national or international acclaim. The petitioner cannot meet this burden simply by submitting voluminous documentation and then declaring, through counsel, that such documentation is self-evident proof of sustained acclaim. Simply claiming that an award is prestigious, or that a patent is only granted to an invention of major significance, cannot under any circumstances serve in lieu of actual evidence to support such claims. The director's notice of decision in this case is unusually thorough in its detail, and the director's findings cannot simply be brushed aside with groundless allegations of bias against Iraqi Kurds.

Counsel states on appeal that a brief will follow within 30 days. The appeal was filed on November 15, 2002. To date, over 60 days later, the record contains no further submission nor any explanation as to why additional time would be necessary. The record of proceeding appears, therefore, to be complete and we hereby render our decision.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished himself as an optical storage/encryption scientist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. While the petitioner has been successful and productive in his chosen field, the evidence of record is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.